IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CONFIRMATION CASE No. 5 of 2005

WITH

CRIMINAL APPEAL No. 1814 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant

Versus

RAJUBHAI CHHAGANBHAI PATEL - Respondent

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Appearance :

MR.PRACHCHAK, LEARNED ADDL. PUBLIC PROSECUTOR, FOR APPELLANT-STATE
MS.BANNA DUTTA WITH MR.P.R.ABICHANDANI, LEARNED ADVOCATES, FOR RESPONDENT

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 31/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The confirmation case and criminal appeal arise out of a judgment and order rendered by the learned Additional Sessions Judge, 2nd Fast Track Court, Navsari, on 31/8/2005, in Sessions Case No.51 of 2003. The accused-convict came to be tried by the learned Additional Sessions Judge, 2nd Fast Track Court, Navsari for the offences punishable under Sections 302, 323 and 451 of the Indian Penal Code and Section 135 of the Bombay Police Act.

1.1 The appellant is alleged to have committed triple murders and has been convicted therefor. The Sessions Court sentenced him with capital punishment. He is also directed to pay a fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for two years. For the offence punishable under Section 323 of the Indian Penal Code, he is sentenced to undergo rigorous imprisonment for one year and to pay a fine

of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months. For the offence punishable under Section 451 of the Indian Penal Code, the accused-appellant came to be sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for six months. For the offence punishable under Section 135 of the Bombay Police Act, the accused-appellant came to be sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.100/-, in default, to undergo rigorous imprisonment for one month. The sentences are ordered to undergo concurrently with a benefit of set off under Section 428 of the Criminal Procedure Code.

2. Aggrieved by the said judgment and order, the accused-convict has preferred Criminal Appeal No.1814 of 2005, whereas, the Confirmation Case arises because of statutory requirements of confirmation of sentence of hanging. These two matters are heard together and are disposed of by this common judgment. For sake of convenience, the

accused-convict is addressed to as the appellant in this judgment.

3. As per the prosecution case, the incident occurred on 18th July, 2003 between 10:30 and 11:30 a.m. It is the case of the prosecution that the appellant suspected the fidelity of his wife and did not approve of his wife maintaining 'good' relations with relatives and acquaintances and, as a result there were disputes between the two. On the day of incident, around 10:30 a.m., the appellant was noticed beating his wife-Usha. This was noticed by Somabhai and on his intervention, the appellant is alleged to have beaten him with an umbrella. While that scuffle was going on, the appellant's wife-Usha escaped. This added to the fury of the appellant and he picked up an iron rod (crossbar) and started chasing his wife. As per the prosecution case, he gave one blow to Manga Bhana in the grass field, who succumbed to the injury. The appellant is alleged to have proceeded further and when he was questioned by Ranchhodbhai, he gave a blow with the crossbar on his head to which Ranchhodbhai succumbed. This incident

occurred in the rice field. It is further alleged that the appellant then came to the house of Karsan Soma where Premiben, wife of Karsan Soma was standing on the *Ota* of the house and the appellant without any rhyme or reason inflicted injuries on person of Premiben, to which she also succumbed. As per the prosecution case, the appellant for no reason caused injury to minor Ankur, who was going on his bicycle and then assaulted Bhupendra, who was on his motorcycle. Both these persons sustained injuries therefrom.

3.1 Thus, as per the prosecution case, the appellant has committed murder of three persons, Ranchhodbhai Ravjibhai Patel, Mangabhai Bhanabhai Patel and Premiben wife of Karshanbhai Somabhai for no reason, no motive and with no instigation from them. The appellant also caused injury to Somabhai Budhabhai, minor Ankur and Bhupendrabhai again for no fault on their part, except that Soma Budha intervened by asking him as to why he was beating his wife. The picture that is projected is as if the appellant was on a murder spree. This chain of

events is alleged to have occurred between 10:30 and 11:30 a.m. at village Khaparvada. The F.I.R. came to be lodged by Vijaybhai Ranchhodbhai and offence was registered. The F.I.R. is at Exh.10 which was given at about 14:00 hours on 18/7/2003 at Mangosi Hospital, which was sent to Bilimora Police Station at 14:30 hours and offence was registered over there at C.R.No.I-60 of 2003. On basis of the F.I.R. and consequent upon registration of the offence, the investigation started. The appellant came to be arrested on 19/7/2003. Police recorded statements of various persons and it emerged that Dhediben Ranchhodbhai and Laxmiben Ranchhodbhai claimed to be eye-witnesses to the incident relating to murder of Ranchhodbhai Somabhai, whereas, Karsan Soma claimed to be eye-witness to the incident of assault and murder of his wife Premiben. So far as incident relating to murder of Mangabhai Bhanabhai is concerned, it was found that the deceased made an oral dying declaration before his son-Jina Manga. There was discovery of weapon used in the incident. Statement of injured witnesses, Somabhai Budhabhai, minor Ankur and Bhupendrabhai were also recorded and

ultimately charge-sheet came to be filed against the appellant in the Court of learned J.M.F.C., Gandevi. Since the offences were triable exclusively by the Court of Sessions, learned J.M.F.C. committed the same to the Court of Sessions and Sessions Case No.51 of 2003 came to be registered.

3.2 Charge was framed against the appellant at Exh.1. He pleaded not guilty to the charge and claimed to be tried. The trial Court after considering the evidence led by the prosecution, came to a conclusion that the prosecution was successful in proving the charges levelled against the appellant and convicted and sentenced the appellant-accused as stated in the earlier part of this judgment and hence, this appeal and confirmation case.

4. We have heard learned Advocate, Ms.Banna Dutta with Mr.P.R.Abichandani on behalf of the convict-appellant. We have also heard learned A.P.P., Mr.H.M.Prachchak, who appears for the State.

5. Since the conviction itself is under

challenge and confirmation or non-confirmation of capital punishment would be dependent on the decision in appeal, we deem it proper to firstly deal with the appeal and then confirmation case.

6. We have heard learned Advocate for the appellant who has taken us through the record and proceedings and has raised following contentions.

6.1 It was submitted that although three persons have lost lives in this chain of events, complicity of the appellant cannot be said to have been properly established. It was submitted that the evidence of Dhediben and Laxmiben, who claimed to be eye-witnesses to the incident, relating to deceased-Ranchhodbhai Somabhai is not reliable. Both of them are daughters of the deceased-Ranchhodbhai Somabhai and are therefore interested witnesses. Their version is not in consonance with the medical evidence. It is also submitted that apart from that aspect, even, if the prosecution case is taken at face value, the appellant cannot be said to have any intention to cause murder of Ranchhodbhai. It was a

coincidence or an accident that Ranchhodbhai intervened and suffered injury with the crossbar which was in hand of the appellant. The appellant has inflicted only one blow on Ranchhodbhai. A few moments prior to the incident, the appellant had no grievance against Ranchhodbhai, nor can he be said to have any anticipation of Ranchhodbhai intervening. But, fury as he had against his wife, he became more furious upon intervention of Ranchhodbhai and inflicted a single blow with the iron rod which was handy. He is not alleged to have caused any further injury and, therefore, even if the prosecution case is taken at face value, it cannot be said that the appellant had intention to cause murder of Ranchhodbhai. It was argued that at the most, knowledge can be attributed to the appellant about likelihood of death of the deceased being caused with the injury caused by the appellant. The case, therefore, would fall at the most under definition of culpable homicidal not amounting to murder.

6.2 It was contended that the appellant was in an infuriated state of mind because of conduct of his

wife and the act can be said to be an impulsive act in a state of anger.

6.3 It was submitted that so far as the incident relating to Mangabhai Bhanabhai is concerned, his son, Jina claims that the deceased made an oral dying declaration before him implicating the appellant. Jina is not an eye-witness, but, he says that when the oral dying declaration was made, Vijay Ranchhod was present. This version of Jina gets no corroboration from Vijay Ranchhod. He does not speak to have gone to the place where Mangabhai was lying in company of Jina, nor does he speak of making of any oral dying declaration by deceased before Jina in his presence and, therefore, it was argued that conviction could not have been recorded only on basis of a weak piece of evidence like oral dying declaration not getting support from other independent, cogent and impartial evidence.

6.3.1 It was further contended that so far as incident relating to Premiben is concerned, her husband Karsanbhai is claimed to be eye-witness, but,

if conduct of the eye-witness seen, it is clear that he is not a reliable witness. It was contended that admittedly the incident occurred latest by 11:30 a.m. The witness flees from the place of incident early. He claims to have seen assault on his father at which point of time, he does not rescue his father. After the incident of Karsan, incident of Premiben occurred and thereafter witness Karsanbhai Somabhai does nothing, but flees from the place of incident. He claims to have arrived at the place of incident (which is his home incidentally) in the evening. In the evening, his son-Raju arrives from his job and notices his father sitting on the *Ota* where the incident of Premi had occurred. Raju at that point of time, does not notice the dead body of Premiben and claims that he was asked by his father Karsan to attend funeral of Ranchhod. Raju attends the funeral of Ranchhod and then reaches home and in the light of motorcycle notices dead body of his mother lying on ota. It was therefore, submitted that conduct of all these witnesses, i.e. Karsanbhai Somabhai and Rajubhai Somabhai are not natural and does not merit acceptance.

6.4 It was contended on behalf of the appellant that the evidence in respect of three murders is therefore scanty, unreliable and untrustworthy. The trial Court has, therefore, committed an error in accepting the prosecution case alleging complicity of the appellant in all three murders.

6.5 It was also contended that the evidence in respect of injury to witness, Somabhai Budhabhai, Ankur Somabhai and Bhupendra Kantibhai is also scanty and conviction is, therefore, wrongly recorded.

6.6 By way of an alternative submission and opposing the confirmation case, it was contended that as per the settled proposition of law, capital punishment is to be awarded only in rarest of rare case. The judicial system has accepted and appreciated the reformative theory and therefore, conviction even if upheld would not show that the case falls in category of rarest of rare case. The appellant has no criminal antecedents. Even, as per the prosecution case, the incident has occurred in a peculiar circumstances where the appellant was in a

furious state of mind and may have acted impulsively, more so, when all three persons are alleged to have been assaulted upon by the appellant abruptly and without any preplanning. It was submitted that it was not a preplanned offence that can be said to have been committed by the appellant. Though feebly, it was contended that the appellant was not in fit state of mind and was suffering from psychic disorder. The trial Court has not properly appreciated the case of the appellant emerging from deposition of the appellant's father, who is examined as defence witness No.1. It was further submitted that in all three instances only one injury is alleged to have been caused by the appellant. There is no further attempt on part of the appellant to cause further injuries. It was contended that as a result of this, the appellant cannot be said to have caused any injury to the victim persons with any preplanning. There was no motive least any animosity between the appellant and the victim and, therefore, the appellant may not be convicted for the offence of murder. It would at the most be a case of culpable homicidal not amounting to murder and, therefore,

appropriate punishment in that regard may be awarded by altering the conviction.

6.7 Last but not the least, it was contended that although three persons have lost their lives, this is not a fit case for capital punishment. It cannot be said that the appellant would be a risk or menace to the society for all future times to come, that society cannot be protected without elimination of appellant by awarding punishment of hanging and, therefore, it was urged that the appeal may be allowed and confirmation case may be dismissed.

7. Learned A.P.P. on the other hand has contended that three persons have lost their lives within appellant's spree for murder. Two were old male members and one of them was a lady. Their death is caused for no reason, for no fault and for no provocation on their part. It was submitted that the injuries are caused on vital parts of the body with a deadly weapon like a crossbar. The injured witnesses have been examined. There are direct pieces of evidence to connect the appellant with the crime. The

injuries are caused on vital part of body with a weapon like crossbar which are certified to be sufficient in ordinary course of nature to cause death. The weapon has been identified and the accused is also identified by this witness. The trial Court has given due consideration to the evidence on record in light of the proposition of law as settled by various judgments and, has then awarded capital punishment. The complicity of the appellant is properly established. The appellant has done to death three persons for no fault on their part and, therefore, case would assume seriousness.

7.1 Regarding incident of Mangabhai, it was submitted that Jinabhai (Exh.30) is not an eye-witness but before him the deceased Manga had given an oral dying declaration implicating the appellant. This aspect has not been challenged during cross-examination of Jina. On the contrary, during cross-examination, it emerges that the witnesses asserts about his father being alive and being able to speak to him. The medical evidence indicates that there were as many as six external injuries and, therefore,

the appellant has caused multiple injuries to Manga and it is not a case of single blow.

7.2 As regards incident relating to Premiben, it was contended that Rajubhai Karsanbhai is not an eye-witness but Karsanbhai is and, in his presence the appellant has caused injury to Premiben with a crossbar for no reason apparent or remote. The injury has ultimately resulted into her death. The medical evidence indicates that the injuries were sufficient in ordinary course of nature to cause death and, therefore, the trial Court has rightly come to a conclusion that the appellant's involvement in murder of Premiben properly established.

7.3 It was contended further that so far as incident of Ranchhodbhai is concerned, incident has occurred in presence of Dhediben and Laxmiben and their depositions cannot be discarded only because they happened to be daughter of deceased. The postmortem notes also indicate that the deceased had multiple injury on his head and, therefore, the trial Court has rightly concluded that involvement of the

appellant in this incident is also properly established.

7.4 It was contended by learned A.P.P. that involvement of the appellant in incident relating to injured witnesses Ankur and Bhupendra is established through depositions of Doctors, as well as, deposition of injured-Ankur (Exh.55) and Bhupendra (Exh.88). The notification issued by the District Magistrate prohibiting carrying of weapon is placed on record at Exh.112.

8. Learned A.P.P. has submitted that here is a person who has hurt the minor boy without any reason besides witness-Bhupendra. He submitted that here is a person, who has murdered three persons for no reason. There was no provocation, nor was the interference of such a nature as would enrage anybody. The incidents have occurred over a period of one hour and time should have ordinarily cooled down the rage and therefore it cannot be said that the incidents occurred in a state of anger where a person may tend to act impulsively. The trial Court

has considered all these aspects and has come to a conclusion that here is a rarest of rare case where capital punishment would be justified. It was, therefore, submitted that the appeal may be dismissed and the sentence of hanging may be confirmed.

9. We have examined the record and proceedings from the angel suggested by both the sides.

10. Although the appellant is alleged to have committed three murders and caused simple hurt to two witnesses, it cannot be said that it is a case of single incident. It is a case of chain of incidents which have occurred in quick succession at different places. The evidence in respect of these events is also different and therefore, will have to be examined distinctly to examine whether complicity of the appellant is properly established by the prosecution in each of the event. Once that is done, question of confirmation or non-confirmation of sentence of hanging can be gone into.

11. Although there is no direct or specific

evidence to show the exact sequence in which the incidents have occurred, it transpires that firstly the incident of the appellant beating Somabhai with an umbrella occurred, thereafter incident of assault and murder of Mangabhai Bhanabhai appears to have occurred in the grass field of Jinabhai and thereafter, it appears that the appellant chased Ushaben to the rice field of deceased Ranchhodbhai and on Ranchhodbhai asking him as to why is he chasing his wife, the appellant inflicted head injuries on Ranchhodbhai with the crossbar resulting into his death. It appears that thereafter the appellant went to the house of Premiben wife of Karsanbhai Somabhai, who was standing on the ota of her house where the appellant is alleged to have straightway committed an assault on her with the crossbar in presence of Karsanbhai Somabhai. The appellant then is said to have travelled further and on Ankur coming across him on bicycle, he has inflicted a blow on side of Ankur and then on Bhupendra.

12. We propose to discuss the evidence in

respect of Mangabhai Bhanabhai, Ranchhodbhai Ravjibhai and Premiben Karsanbhai first.

12.1 So far as incident of Mangabhai Bhanabhai is concerned, it is clear that the incident is not witnessed by any one. However, the complicity of the appellant is sought to be established by examining witness-Jinabhai Mangabhai at Exh.89. This witness is the son of the deceased. He says that the incident occurred on 18/7/2003 and Raju had hit his father with a crossbar causing a hole in the chick of his father and an injury on the chest. He says that his father was assaulted by Raju in the grass field of Jina Chhana. The witness says that he and Vijay had gone together where his father told him that Raju Chhagan had caused injury to him with a crossbar on chick and chest. Witness says that he took his father in auto-rickshaw in Mangasi Hospital and doctor was not present and therefore they took his father to Gandevi but, his father expired on the way. He has deposed regarding other incident, but on basis of hearsay. During cross-examination, he says that he knows the accused very well as they belong to same

village. He denies the suggestion that the mind of the accused is disturbed. He says that he has the knowledge about the incident from what was told to him by his father and he asserts that when he went to his father, his father was lying and was able to speak.

12.1.1 Thus, from deposition of this witness, it is clear that according to this witness, deceased Mangabhai Bhanabhai had made an oral dying declaration before him in presence of witness-Vijay. Barring this oral dying declaration, there is no other evidence led by the prosecution to connect the appellant with this incident. It is an established proposition of law that oral dying declaration is a weak piece of evidence and the Court should look for some corroboration or some other supportive material contemporaneous in nature while accepting such weak piece of evidence. We, therefore, propose to examine the evidence of Vijay Ranchhod in whose presence this witness, Jina claims that deceased had made oral dying declaration.

12.1.2 Witness-Vijay Ranchhod is examined at Exh.9 as Prosecution Witness No.1. He is the first informant. We have given a close scrutiny to his oral evidence and we find that Vijay does not speak of accompanying Jinabhai to the place where Mangabhai was lying, nor does he speak of any oral dying declaration made by Mangabhai to Jina Manga in his presence. Though, not a substantive piece of evidence, we have also examined F.I.R. at Exh.10. There also, there is total silence about oral dying declaration by deceased-Mangabhai before Jinabhai in presence of this witness.

12.1.3 What therefore emerges from depositions of Jina and Vijay is that the version of Jina regarding oral dying declaration made by Mangabhai to him in presence of Vijay does not get any support or corroboration from deposition of Vijaybhai. Jinabhai is the son of deceased-Mangabhai. There is no other independent or cogent evidence to support the say of Jina as to oral dying declaration, nor is there any other evidence to connect the appellant with the crime, except the so-called oral dying declaration.

12.1.4 It is true that the say of Jina in his examination in chief about oral dying declaration is not specifically challenged during cross-examination. But, fact remains that Vijay Ranchhod was examined as Prosecution Witness No.1 at Exh.9, prior in point of time then Jinabhai Mangabhai, who is examined as Prosecution Witness No.13 at Exh.89 and when Vijay Ranchhod has not in his deposition stated anything about oral dying declaration and when it is found that Jina's version is not getting any corroboration, absence of specific denial or a challenge to the witness during cross-examination would be of little significance or consequence. We may also add that in his deposition, Vijay Ranchhod (Exh.9) has stated that he took his father Ranchhod to the hospital at Bilimora which seems to be more natural and therefore, we are inclined to accept his version as compared to the version of Jinabhai. Under the circumstances, it is a matter of doubt whether the deceased really did make an oral dying declaration before Jinabhai. We may say that Jinabhai; in his deposition says nothing on the aspect as to how he learnt about the incident, what led him to come to

the grass field where his father was lying. He speaks only on oral dying declaration after he reaches that place, but he totally silent on who informed him about the incident having occurred and about his father lying in the field which made him to come to that field. He does not say anything as to how and why Vijay came, whether it was at his instance or independent of it is also not disclosed by him. All these factors ultimately lead us to conclude that involvement of the appellant in the incident of Mangabhai Bhanabhai cannot be said to have been proved beyond reasonable doubt.

13. Now switching over to the incident of assault on and murder of Ranchhodbhai Ravjibhai. Prosecution has examined Dhediben at Exh.44 and Laxmiben at Exh.56. These two ladies are daughters of the deceased and claim to have witnessed the incident. The prosecution has examined Dr.Tandel at Exh.61 and the postmortem notes are at Exh.66.

13.1 On reading deposition of Dr.Tandel (Exh.61), we find that the doctor noticed four external

injuries. The first injury was a cut lacerated wound on right ear. The margins were irregular and the ear was torn. The second injury was on right temporal and occipital region in form of bruise of the size of 8 c.m. x 2 c.m., which extended to the right ear. The third injury was a depressed fracture over the right temporal occipital region of the size of 2 c.m. x 8 c.m. and the 4th injury was a C.L.W. with a compound depressed fracture of right occipital bone. There were two depressed fractures on right temporal bone and right occipital bone. The injuries were ante-mortem. There was damage to the brain and doctor opined that the injuries were possible with muddamal article No.14 crossbar / iron rod. The injury was sufficient in ordinary course of nature to cause death. Doctor has denied suggestion in cross-examination that the injuries found on person of the deceased were possible out of a fall.

13.1.1 From the evidence of the doctor and postmortem notes, we find that the injury found on person of the deceased could not have been accidental. We find that there were multiple injuries

on person of the deceased. The injuries were of serious nature found on vital part of the body. They are opined by the doctor to be sufficient in ordinary course of nature to cause death. We do not have any doubt that the deceased met with an homicidal death. We conclude accordingly.

13.2 What is now required to be examined is the evidence of Dhediben and Laxmiben to examine whether involvement of the appellant in the incident gets established by their evidence or not.

13.2.1 Dhediben is examined at Exh.44. She says that the incident occurred on 18/7/2003 in their field. His brother Vijay had gone to village Navakuva to attend to his tailoring work. Dhediben says that her father, herself and Laxmiben had gone to their rice field for plantation. Around 10:30 a.m., the appellant was seen chasing his wife-Usha with an iron rod in his hand, therefore, her father (deceased Ranchhodbhai) asked appellant-Raju as to why is he chasing Usha. On his asking so, the appellant turned on her father and asked him as to

who is he to ask and then inflicted a blow on his head near right ear with the iron rod. As a result, her father fell to the ground. She says that she noticed injury on the right ear of her father. Laxmi also rushed. Thereafter, Raju ran after Usha and Laxmi went to telephone Vijay. She says that her brother-Vijay came alongwith Ishwar Soma, Ramesh Soma and Magan Narayan. They found that her father had expired. They therefore took the dead body in an auto-rickshaw and the witness herself and Laxmi went home. She then says that she learnt about death of Mangabhai Bhanabhai, as well as, Premiben. She identifies the accused, so also, the weapon. During cross-examination, she asserts that Raju came there at about 10:30 a.m. She knows Raju as they are neighbours and that Raju had a thick iron rod of the size of a hand. She says in terms that she had seen the incident from close quarters. She says that she cannot definitely say whether the rod was held by the assailant in left hand or right hand. Several questions have been put to the witness during cross-examination on various aspects, but what emerges importantly is that she asserts that the appellant

assaulted the deceased, that the appellant had used both his hand to give a blow. She admits that the blow was given on back of the head.

13.3 Laxmiben is examined at Exh.56. She also says the same story. She says that her father, herself and sister-Dhedi were working in the field from around 9 O'clock. Around that time, Raju (the appellant) came there chasing his wife-Usha with an iron rod in his hand. Usha passed through their field and at that time, Raju started beating her father with the iron rod. The blow was given on the head of her father and on a second blow being given on ear; the ear was cut and her father fell down. Her father expired on the spot. Dhedi remained with the father and she went in the town and informed neighbours etc. She has identified muddamal article No.14 as the weapon. She has also identified the accused. She has been cross-examined at length. She denies suggestion that Usha used to tell her that her husband (appellant-Raju) had gone mad. She admits that at the time of the incident, she was scared and then had escaped. She admits that she went home

after her father sustained injury. She also denies that the accused has not caused any injury to her father.

13.4 From a conjoint reading of depositions of Dhediben and Laxmiben, it appears that they have seen the incident, the appellant has caused injuries on the head of the deceased, which has resulted into two depressed fractures besides damage to the brain. The deceased was aged about 70 years. It is nobody's case that he was armed with any weapon. It is nobody's case that he gave any provocation nor was there any fight or quarrel or scuffle. Only on the deceased inquiring as to why the appellant was chasing his wife with an iron rod, the appellant has inflicted the injuries. In Indian Society, it is natural that an elderly person would ask and / or intervene when he notices a person chasing his wife with an iron rod in his hand and no exception could have been taken by the appellant to such a question. We also find that the appellant has not only given two blows on head of the deceased aged about 70 years, but has given these blows with both his hands. Weapon used is an iron

rod approximately 3'6" in length. It is not possible to infer absence of intention in such a situation. The appellant has caused two injuries on vital part like head of the deceased, who was aged about 70 years; with an iron rod by holding the rod with both the hands together with all possible force or impact. Complicity of the appellant therefore in the incident so far as it relates to deceased-Ranchhodbhai Ravjibhai has been properly established by the prosecution and we are in agreement with the trial Court so far as this aspect is concerned.

13.5 Going over to the incident of Premiben, the incident has occurred on the ota of her house. As per the prosecution case, deceased-Premiben and her husband-Karsan Soma were on the ota when the appellant came there with the iron rod in his hands and inflicted blow on deceased-Premiben. The incident is claimed to have been witnessed by Karsan Soma (Exh.60), who is the husband of the deceased. The prosecution has also examined Rajubhai Karsanbhai at Exh.53 and Dr.Hasmukhbhai Naginbhai Patel at Exh.69.

13.5.1 Karsanbhai Somabhai Patel in his deposition at Exh.60 says that Premiben was his wife. One of his son is Raju and other is Dinesh. His daughter is Meenaben, who is married. He says that on 18/7/2003 he was at home. His wife was also at home, at that time, Raju Chhagan was beating his wife Usha. His father went to the rescue of Usha and Raju therefore turned on him and started beating his father with an umbrella. They therefore raised shouts and therefore Maganbhai Chhanabhai and Rameshbhai Somabhai arrived and rescued his father. Thereafter, accused-Raju was moving near their house with an iron rod. The appellant has asked as to why did they intervene when he was beating his wife and then he went into field with an iron rod in his hand. He and his wife were sitting on ota of their house. At that time, Raju came back and inflicted a blow on head of his wife with an iron rod. His wife therefore fell down. When he tried to intervene, the appellant turned on him and as he was armed with an iron rod, the witness says that he escaped from the place. He says that when he came back he found that his wife had expired. She had bled from her head

injury and the blood had dried. The witness then narrates about having learnt the other two incidents. He has been cross-examined by the defence and he denies suggestion that he fled from the place on seeing the disputes between the appellant and his wife. He denies suggestion that the appellant used to loose his mental balance on many occasion and that he was under treatment of a psychiatrist. Witness says that Raju went to the outskirts of the town with an iron rod in his hand. Importantly, the witness denies that he came back to the house in the night but asserts that he came back to the house in the evening and then learnt that his wife had expired. He also says during cross-examination that his wife fell down because of the blow given by the appellant and thereafter the appellant ran away.

13.5.2 Rajeshkumar @ Rajubhai Karsanbhai Patel is examined at Exh.53. He is the son of the deceased-Karsanbhai Somabhai. He says that on 18/7/2003 he had gone to Onjal and came back after completing his job around 6:30 p.m in the evening. On reaching home, Rameshbhai Chhanabhai Patel met

him. Rameshbhai stopped him and told him that Rajubhai Chhaganbhai has committed two murders of Ranchhodbhai Ravjibhai and Mangabhai Bhanabhai with an iron rod. He says that then Rameshbhai came with him on the motorcycle. He reached home and parked his motorcycle. His father (Karsanbhai Somabhai P.W.No.22) was sitting on ota who asked the witness to attend the funeral procession of Ranchhod Ravji and therefore witness went in the procession. He came back from procession at about 9:00 p.m. At that time, there were no lights. He came with the motorcycle and in the headlight of the motorcycle, he saw his mother sleeping on the ota. He tried to wake her up but she did not respond. He noticed that she was bleeding from mouth and nose and that she was dead. He, therefore, raised shouts, as a result his neighbours Chhanabhai Budhabhai and his wife Maniben and Karsan (his father) came. He was told by them about the other incident relating to his grandfather Somabhai Budhabhai. He says that nobody told him as to who murdered his mother but village people told him that Raju Chhagan had murdered his mother. He says that he does not know reason why Raju Chhagan

had murdered all these persons. During cross-examination, he says that when his mother was assaulted upon, she was alone and there was nobody with her. He says that he is deposing on incident from what was told to him by the village people.

13.5.3 A conjoint reading of depositions of Karsanbhai Somabhai and Rajubhai Karsanbhai would make it clear that Raju Karsanbhai has no personal knowledge about the incident. He says that when he came home at about 6:30 p.m. in the evening, he saw his father sitting on the ota. He does not claim to have seen his mother lying on ota, although the incident has occurred at that place much prior to that point of time. He, however claims to have noticed his mother lying at about 9:00 p.m. after returning from funeral ceremony of Ranchhodbhai. The incident has occurred in the month of July and it can legitimately inferred that at about 6:30 p.m. in the evening, there would be sufficient light and therefore, it is not possible to reconcile as to how this witness Raju Karsan failed to notice deceased-Premiben lying on ota at 6:30 p.m. in the evening

when he came back and noticed her at 9:00 p.m. The incident had occurred between 10:30 and 11:30 a.m. in the morning and therefore if Premiben was lying on ota at 9:00 p.m., she must be lying on ota at 6:30 p.m. also. This situation has remained unexplained.

13.5.4 At this stage, it would also be appropriate to note that according to this witness when he noticed dead body of Premiben at 9:00 p.m., he raised shouts and in response to these shouts, Chhanabhai Budhabhai, his wife Maniben and Karsanbhai Somabhai (father of the witness) came there. The witness has in terms stated that nobody told him as to who had murdered his mother. He learnt about involvement of the appellant in the incident through village people. Now in this context, if deposition of Karsanbhai Somabhai is seen, he claims to be an eye-witness. If he was an eye-witness and if he had reached the place on hearing shouts of Rajubhai Karsanbhai at about 9:00 p.m., it can be expected of him to inform Rajubhai Karsanbhai as to how the incident had occurred if he really had seen the incident. But, Raju says that he learnt of the

incident only through village people and nobody told him as to how the incident occurred.

13.6 Apart from the above aspects, it is also unreconcilable that witness, Karsanbhai Somabhai would have asked his son-Raju (P.W. No.18) to go and attend funeral of Ranchhodbhai, if dead body of Premiben was lying on ota when Raju arrived from his service at 6:30 p.m. It is not that Karsanbhai Somabhai after fleeing from the place of incident on accused turning on him, came back only at 9:00 p.m., because Karsan himself asserts that he came back in the evening and Raju also asserts that when he came back in the evening his father was sitting on ota and asked him to attend funeral of Ranchhodbhai. This conduct on part of Karsan i.e. asking Raju to attend funeral of Ranchhodbhai coupled with the fact that Raju Karsan did not notice dead body of Premiben makes it doubtful whether Premiben was lying on ota in the evening around 6:30 p.m. ? If Karsanbhai Somabhai does not tell anything to Raju as to how incident occurred when he reaches the place upon shouts of Raju at 9:00 p.m., it becomes doubtful

whether he could have really seen the incident. The conduct of Karsanbhai Somabhai of returning to home in the evening even after having noticed the appellant inflicted blow on deceased-Premiben and Premiben fallen down also raises doubts. Normal human conduct of a person would be to intervene. If he apprehends risk to his life, he may flee but then he would go to a place where he would get some protection or help and with help of other may come back to the place of incident, instead of, he claims to have returned to the place of incident in the evening. Where was he and what was he doing for about 7-8 hours, is left to guess work. No explanation in this regard is coming from the prosecution. Therefore, the conduct of this witness-Karsanbhai Somabhai in remaining away for a period of about 7-8 hours also makes his case of having seen incident doubtful. The whole story becomes doubtful as to whether the incident occurred between 10:30 and 11:30 a.m., as is alleged or whether it occurred after 6:30 p.m. is also a question. Because possibility of the incident having occurred after 6:30 p.m. also cannot be ruled out as Raju does not

notice dead body of his mother lying on ota when he returns from job. The conduct of Karsanbhai Somabhai also reflects similar situation when he asks Raju to attend funeral of Ranchhodbhai. A person whose wife's dead body is lying in home would not ask his son to attend somebody's funeral. The whole story regarding death of Premiben therefore rolls under a cloud of doubt.

14. So far as the incident of the appellant assailing Somabhai Budhabhai is concerned, he is prosecution witness No.19 at Exh.54. He says that on 18/7/2003 when he came back from Bilimora he heard shouts of Usha, wife of the appellant. He noticed that appellant was beating Usha, he therefore, went to her rescue. The appellant turned on him and started bearing him with an umbrella which was in the hand of witness himself. Witness says that the appellant gave him a blow with the umbrella on his back and gave fist blow on face. He, therefore, raised shouts, as a result Ramesh Soma and Magan Chhana came and rescued him. In the meantime, Usha fled away in the outskirts. The appellant therefore

went after her with the iron rod. The medical certificate in respect of the case of this witness is produced at Exh.79 which says that there was no external injury, but he was treated for pain over head and persons Ramesh Soma and Magan Chhana who are claimed to have rescued this witness have not been examined.

14.1 So far as incident involving Ankur is concerned, Ankur is examined at Exh.55. He says that he went to school at about 10:00 a.m. and from the school he was going on his bicycle to his friend Sahil's house for a notebook, at that time Raju Chhagan met him and Raju without saying anything inflicted a blow with the iron rod on his waist. As a result he fell down. He says that at that time Bhupendra was coming on Suzuki Motorcycle and Raju assaulted Bhupendra also.

14.2 Bhupendra is examined at Exh.88. He says that on 18/7/2003 he started from his home at about 10:30 a.m. on his Suzuki Motorcycle, at that time, the appellant assaulted him with an iron rod on his

head, but he raised his left hand in defence and received a blow on left elbow. He then, escaped from the place and went to Dr.Dipak Gandhi for treatment.

14.2.1 Dr.Bhupendra C. Panchal is examined at Exh.86. He says that he had examined Ankur, who gave history of assault. There was no fractures of ribs. Doctor says that he had issued certificate at Exh.87 which speaks of blunt injury on side of Ankur.

14.3 Dr.Dipak Gandhi is examined at Exh.76. He says that he had examined Bhupendrabhai Kantilal Patel. He had given history of a blow on left elbow. He says that he had issued certificate at Exh.77 which speaks of treating Bhupendra Kantilal Patel for injury over left elbow joint on 18/7/2003.

14.4 The sum total of these depositions and medical certificates is that there is evidence of injured Ankur and Bhupendra supported by medical evidence of Dr.Bhupendra and Dr.Gandhi respectively about injury sustained by these two witnesses. There is deposition of Soma Budha whose deposition is not

supported by medical evidence indicating injury but does speak of treatment. With this evidence and considering the manner in which the incident had occurred, we are of the view that offence under Section 323 of the Indian Penal Code has rightly been held by the trial Court to have been proved by the prosecution.

15. The Notification issued by the District Magistrate under Bombay Police Act is at Exh.112, which indicates that carrying weapon was prohibited at the time of incident. It has come on record that the appellant was armed with an iron rod (crossbar) which would fall within the prohibited items and therefore, the trial Court was justified in recording conviction under Section 135 of the Bombay Police Act.

16. From the foregoing discussion, it is clear that involvement of the appellant in the incident relating to homicidal death of Premiben and Mangabhai Bhanabhai Patel cannot be said to have been properly established by the prosecution. However, involvement

of the appellant, so far as, it relates to murder of Ranchhodbhai Ravjibhai Patel has been properly established by the prosecution and therefore the conviction of the appellant for murder of Premiben and Mangabhai Bhanabhai Patel has to be set aside, while confirming the conviction for murder of Ranchhodbhai Ravjibhai Patel.

16.1 Conviction of the appellant in so far as it relates to causing simple hurt to Ankur Somabhai, Bhupendrabhai Kantibhai and Somabhai Budhabhai is also properly established and there is no need for interference in the order of the trial Court in that regard.

16.2 So far as conviction under Section 451 of the Indian Penal Code is concerned, i.e. in respect of incident of Deviben, this Court has found that involvement of the appellant in incident relating to Premiben is not properly established, conviction under Section 451 of the Indian Penal Code for offence of house trespass cannot be sustained and will have to be set aside.

17. Learned A.P.P. has relied upon following authorities in respect of confirmation of capital punishment.

i) *SURJIT SINGH VS. NAHARA RAM & ANOTHER; reported in 2004 SCC (CRI) 1801;*

ii) *UNION OF INDIA VS. KULDEEP SINGH; reported in 2004 SCC (CRI) 597;*

iii) *RAM DEO CHAUHAN & ANOTHER VS. STATE OF ASSAM; reported in A.I.R. 2000 SC 2679;*

17.1 However, since involvement of the appellant is found to have been proved only in case of murder of Ranchhodbhai Ravjibhai Patel and not in two others, we do not find that these authorities can be of any assistance to the prosecution.

18. Resultantly, Criminal Appeal No.1814 of 2005 is partly allowed. Conviction of the appellant for murder of Mangabhai Bhanabhai Patel and Premiben wife of Karsanbhai Somabhai and four house trespass in the house of Premiben is set aside.

18.1 Conviction of the appellant for the murder of Ranchodbhai Ravjibhai Patel is confirmed, so also, the conviction for causing simple hurt to Ankur Somabhai, Bhupendrabhai Kantibhai and Somabhai Budhabhai is also confirmed. Conviction of the appellant for offence punishable under Section 135 of the Bombay Police Act for carrying prohibited weapon is confirmed.

19. Now comes the question as to sentence. This question will have to be examined alongwith the confirmation case.

20. As this Court has come to a conclusion that the prosecution was successful in establishing the case for murder of Ranchhodbhai Ravjibhai Patel against the appellant and not the case for murder of Mangabhai Bhanabhai Patel and Premiben Karsanbhai, the case would not fall in category of a case of multiple murder. There is no material on record to hold that the appellant is a menace to the society and awarding life imprisonment would be insufficient.

The murder cannot be considered as brutal grotesque, diabolical, revolting or of dastardly manner so as to arouse intense and extreme indignation of the community. Undoubtedly, a murder is a serious crime, but in present case there is no material to conclude that life imprisonment would be inadequate and awarding capital punishment would be the only adequate punishment. Reformation of miscreant during the span of imprisonment cannot be ruled out in the present case, as the appellant does not seem to have any criminal antecedents. We cannot overlook that the incident has occurred in a peculiar set of circumstances. The appellant even as per prosecution case had serious doubts about the fidelity of his wife, as a result of which there was quarrel between the two. The magnitude of quarrel seems to be very high because on intervention by Somabhai Buddabhai, the appellant hits him and when his (appellant's) wife escapes, he chases her. This would reflect that he was in a fit of fury. When incident has occurred in such situation, it cannot be considered as an aggravating circumstances. Considering the case of the appellant from the above angle, it cannot be

classified as a case falling in the category of rarest of rare case. The appellant is, therefore, directed to undergo imprisonment for life. The capital punishment awarded on the appellant cannot be and is not confirmed. The award of fine for the offence of murder is confirmed. The confirmation case stands disposed of accordingly.

20.1. We confirm the sentence awarded by the trial Court for offence punishable under Section 323 of the Indian Penal Code and 135 of the Bombay Police Act, having confirmed the conviction in earlier part of this judgment.

(A.L.DAVE, J.)

(BANKIM N. MEHTA, J.)

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